Equity

Equity submission to the Taylor Review on modern employment practices

Equity is the trade union representing over 42,000 people working in the UK's film, television, theatre, dance, variety and music industries. Our membership includes actors, singers, dancers, stage managers, circus artists, theatre directors and many other performers and creative workers. We also have over 5000 student members who are currently training at accredited drama schools and other recognised higher education institutions.

Security, pay and rights

• To what extent do emerging business practices put pressure on the trade-off between flexible labour and benefits such as higher pay or greater work availability, so that workers lose out on all dimensions?

The creative sector is the original gig economy. While new business models and practices do arise in the sector, there is a long history of atypical working which should not be overlooked in the excitement of thinking about app based employment services and businesses.

The creative sector is also an important driver of the economy, accounting for £87.4bn of value in 2015 and 1.86 million jobs. The sector has grown by 34% since 2010. Since 2011, the number of jobs in the Creative Industries has risen by nearly 20 per cent - almost triple the rate of the UK economy. Employment in music, visual and performing arts currently stands at 286,000 and between 2011 and 2015 job growth in these subsectors topped 34%.

Equity has been able to negotiate and maintain collective agreements covering most of the major areas of work in the entertainment industry (film, television, dance, radio, live entertainment and theatre). These collective agreements set minimum rates of pay and terms and conditions which provide security for workers and employers in our industries.

Flexible labour has been a long running characteristic of the creative industries. Availability of talent, often at short notice, is crucial for many employers. Touring and overseas working (filming, cruise ships, one off performances etc) are not uncommon and combined with the norm of short term contracts and varying rates of pay across sectors (TV, film, theatre, dance the music/audio, live entertainment and fashion industries) make for a precarious profession.

A trade off between flexible labour supply and higher earnings is not the norm in the creative sector, as the question suggests. Equity's most recent survey of members found that 11% earned nothing from their work in the entertainment industry and 67% earned either nothing or under £10k per year. Nearly half of respondents (46%) had worked in the entertainment industry for no pay in the previous twelve months and of those who had 51%

received no expenses. Theatre and film were identified as parts of the entertainment industry in which no pay practices were widespread. Of those who had worked for no pay in the past twelve months 47% had worked in theatre and 25% in film.

Student members have reported that they are told to expect to work for free for the first two years of their careers at least and information received informally from other members suggests there is a widespread culture of unpaid work affecting dancers, models and performers working in non standard workplaces, such as schools and other touring venues. The latter issue was raised in a motion that was passed at Equity's Annual Representative Conference in 2016.

While Equity campaigns and negotiates to secure professional pay, a safety net is vital for performers and other creative workers. Cuts to social security support and the introduction of Universal Credit, which penalises self-employed workers through the application of the Minimum Income Floor, as well as forthcoming rises in voluntary National Insurance payments and other costs such as the introduction of Making Tax Digital all present significant barriers to working performers, and particularly those from non traditional backgrounds.

The withdrawal of Housing Benefit for 18-21 year olds, in tandem with capped payments for under 35s acutely affect young performers. The freeze in benefit rates for the main means-tested benefits has also had a significant impact. Balancing caring responsibilities with a creative career is also a significant concern for Equity members, particularly those without financial or other family support.

•To what extent does the growth in non-standard forms of employment undermine the reach of policies like the National Living Wage, maternity and paternity rights, pensions auto-enrolment, sick pay, and holiday pay?

Where possible, Equity seeks to reach new and adaptable agreements with producers and employers in order to ensure compliance with National Living Wage legislation, particularly in areas such as student films and fringe theatre which has demonstrated strong growth in recent years. The union has also launched initiatives such as the Rest to Rest Guide to Holiday Pay to educate members and employers in the sector as to the legal duties associated with engaging members: https://www.equity.org.uk/documents/guide-to-holiday-pay/

For over two years Equity has been running the Professionally Made, Professionally Paid campaign. This Campaign seeks to challenge poor practices and promote the set of reasonable and pragmatic union contracts we have available for use on low budget productions: http://www.equity.org.uk/campaigns/professionally-made-professionally-paid/

Since the launch of the campaign, 168 productions have made use of the Equity Fringe Agreement, employing 800 performers and stage managers. Over 100 production companies have been involved in these shows. In total, over £1m in wages has been paid to

performers and stage managers working on Professionally Made Professionally Paid productions since the start of the campaign.

Despite these successes many Equity members report that they continue to be asked to work for free on a frequent basis or that it can be a struggle to assert their rights to holiday pay. An indicator of the mountain of unpaid work are the reports Equity receives from members about job websites listing around 20-30 new unpaid roles each day.

Adherence to basic employment rights would be aided by greater understanding and recognition of the employment status of entertainment industry workers, particularly by advice services and bodies such as HMRC which has in the past advised businesses that performers are not workers.

For many years Equity has also argued that sector specific advice is needed for the entertainment industry on the question of payment of the National Living Wage. The Low Pay Commission has agreed with these arguments and since 2010 has made several recommendations that such advice should be developed and published by Government Departments.

Sector specific advice would be of enormous value not just to workers, but also to hundreds of new and existing businesses in the creative and media sectors, including those employers who want to work in good faith with Equity to reach suitable agreements for the engagement of performers. In the absence of any concerted action by BIS, now BEIS, to issue proper sector specific advice, it has been left to trade unions such as Equity to pick up the pieces of the Government's failure to promote and enforce NLW compliance. In an environment where workers can fear reprisal by employers or are faced with the barrier of tribunal fees, this can be difficult.

The continuing lack of sector-specific guidance or proper Government enforcement causes uncertainty and cost for employers and workers alike. It can also lead to a reduction in professional standards and poor treatment of creative workers, particularly with regards to health and safety and wellbeing. 56% of Equity members report they've been the subject of bullying or harassment. This figure compares to 33% for other sectors according to the TUC and represents a major problem in terms of mental health and wellbeing. Unpaid work is also often linked with poor working conditions, such as venues with no or poor backstage conditions, excessive working hours, night time working with no transport home, no refreshments facilities and so on.

A number of Equity's collective agreements make provision for parental pay and Equity's Pension Scheme offers members, as 'eligible job holders', a Qualifying Workplace Pension Scheme which can be paid into by a range of employers across television, theatre, film and radio. Beyond those employers signed up to the Equity Pension Scheme, there have been problems with noncompliance with auto enrolment legislation and Equity officials have reported difficulties when approaching employers on this issue.

As well as continuing to support the status of creative professionals as workers, entitled to collective bargaining coverage and pension rights, policy makers should review those areas

of welfare reform which could hinder growth in the creative sector. In the context of changes to the national insurance regime, there is also an opportunity to improve maternity and paternity pay as well as give consideration to sick pay schemes which could be accessed by self employed workers.

Progression and training

•How can we facilitate and encourage professional development within the modern economy to the benefit of both employers and employees?

In the UK, the quality of training for performers and other creative professionals is of a high standard but it is not always accessible. Fees for drama schools are unaffordable for many young people and in many cases may follow the completion of an undergraduate degree which has already put graduates into considerable debt.

Beyond performing roles, there are challenges faced by other creative workers trying to build a career in the sector. Primary among these is the pressure to work for free or for low pay. In order to tackle this Equity has stressed that all arts organisations in receipt of public funding should have a responsibility to promote career progression and skills development - in the first instance by ensuring that creative workers are paid properly for their work.

Equity has representation on the boards of training bodies including the Council for Dance Education and Training (CDET) and Skillset. As such, we can provide a voice for the workforce and help to improve the professional development framework for the creative sector. For example, Equity hopes to discuss with Skillet their plans to work jointly with the British Film Institute to implement the training arm of their future strategy and will stress the importance of upskilling student film-makers on the importance of engaging performers on professional contracts.

The balance of rights and responsibilities

•Do current definitions of employment status need to be updated to reflect new forms of working created by emerging business models, such as on-demand platforms?

Within Equity's membership there are different categories of worker. A small number of members working as creative team or in the major opera, ballet or other companies are permanently employed. Some Equity members are fully self-employed including fashion models and variety artists. Most Equity members work on short term contracts, are self employed for tax and national insurance status purposes (since 2014), but workers under employment law tests and covered by collective bargaining agreements. As such they have a right to the National Living Wage, holiday pay, protection against unlawful deductions from wages and other worker rights which Equity seeks to enforce. These workers are also 'eligible job holders' under pensions law. Self-employed status for tax and national insurance is an important factor in maintaining the talent pool for younger performers who are seeking to establish a foothold in the profession. It also makes the sector attractive for foreign investment.

The current status structure in UK employment law (employee – worker – self employed) is broadly fit for purpose and we do not believe that attempts to restructure it would currently

be as helpful as improving awareness and enforcement of current legislation around employment rights.

Opportunities for under-represented groups

•How can we harness modern employment to create opportunities for groups currently underrepresented in the labour market (the elderly, those with disabilities or care responsibilities)?

DCMS data from 2015 found that 91.8 per cent of jobs in the Creative Economy were held by people in more advantaged socio-economic groups. In the performing arts sector, it is also notable that many of our most successful BAME performers, many of whom come from working class backgrounds, have not necessarily found that success through pathways in the UK creative industries. Many of them trained in the UK and due to a lack of opportunities moved to the US where they have been offered much more work in the TV and film industry there. Difficulties are also experienced by parents, carers, older performers – and particularly older women - seeking work opportunities in the creative and media sectors.

Increasing work opportunities for performers and other creative workers from non-traditional backgrounds is a core priority for Equity. For many years Equity has campaigned for improved portrayal and participation of BAME, LGBTI, deaf and disabled people and women in the media and on stage and through our Play Fair campaign: http://www.equity.org.uk/campaigns/play-fair/ we seek to promote inclusive casting practices throughout the entertainment industry. Improving social diversity in the arts and media is also one of the key aims of the Professionally Made, Professionally Paid campaign.

Equity is a supporter of the Parents in the Performing Arts Campaign which seeks to work with industry partners to find flexible and affordable solutions for parents and carers working in the creative industries who cannot access financial support such as childcare vouchers or suitable childcare provision that accounts for the irregular working patterns or night time working common in the creative industries: http://www.pipacampaign.com/. We also work closely with campaign groups including Equal Representation for Actresses and Act for Change.

Recruitment practices in the performing arts are often built around personal relationships, subjective judgements and networking. The casting process can also be inaccessible for performers with caring responsibilities or those who do not normally work or live in London because of short notice of auditions, the extensive preparation sometimes required for roles and the cost of travel.

During the last two years a working party of Equity members has been examining ways to increase fairness and opportunities in the casting process. This work has been undertaken in partnership with the Personal Managers Association, the Cooperative Personal Managers Association, Spotlight and the Casting Directors Guild. Coming out of these discussions, Equity will be publishing its Manifesto for Casting this summer which will challenge all those involved in the casting process to come up with recruitment practices that are fair, less stressful and accessible for a more diverse pool of talent.

New business models

•How can government – nationally or locally – support a diverse ecology of business models enhancing the choices available to investors, consumers and workers?

For the creative sector to continue to grow and provide opportunities to people from a diversity of backgrounds, secure funding is essential. Despite commitments made by central Government to ring fence arts funding at national level until 2020, local authority funding, which is an often overlooked but vital part of the arts funding ecology, has been squeezed considerably. Any further cuts to public funding for the arts at national and/or local level inevitably places the sustainability of many organisations at risk, inhibits the emergence of new employers and places downward pressure on the pay, terms and conditions offered in the sector. Insecure funding affects not only the employment, training and development opportunities available to actors and creative professionals and also reduces the access and outreach opportunities for young people across the country.

Equity has called on the Secretary of State for Culture, Media and Sport to intervene to tackle the arts funding crisis unfolding in the UK's local authorities. A thorough mapping exercise must also take place to assess the level of EU funding that comes into the sector both directly and via the European Social Fund, universities and other indirect means. Given the importance of the creative sector to economic growth, and the relatively small amounts of seed funding the sector requires, existing funding streams must be ring fenced or replaced by central Government funding.

Producers in the animation, video games, film, high end television and theatre sectors also benefit from access to creative tax reliefs. Equity has consistently argued that akin to organisations in receipt of other forms of public funds and subsidies, these employers should have a greater obligation to adhere to best practice in term of engaging and employing workers. This should be done through engaging with trade unions such as Equity and engaging workers on union/industry standard contracts.

For more information regarding this submission please contac